



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

December 10, 2012

Arthur Avey and Gail Rowland
PO Box 838
Kettle Falls, WA 99141

Re: Water Right Application No. S3-30649

Dear Mr. Avey and Ms. Rowland:

The Department of Ecology has determined that your Water Application Number S3-30649 must be rejected. It is our understanding that even though water is available from the National Park Service, it is your desire to have a water right in your name. That is not possible for two reasons. From the state's perspective, under RCW Chapter 90.03.380, a water right becomes appurtenant to the land upon perfection. Essentially, the land owner becomes the controlling interest in a water right when it changes from being a permit to a certificate. So, even though you made the investment in time, money, and materials to develop your project, in the end the United States as the land owner controls the water right.

Also, the lease agreement between you and the National Park Service expressly prohibits lessees from owning water rights: "Title to any and all water appropriations made under State law shall be perfected in the name of the United States as appurtenant to the lands." See section 2e under the Terms and Conditions of the 2012 lease agreement. Again, the federal government becomes the controlling party.

As you are aware, surface water from the Columbia River is available from the National Park Service for the purposes you identified in your application. This is currently your only choice if you wish to continue pumping from the river.

For these reasons your application is hereby **rejected**.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

FILE COPY A recycling symbol consisting of three chasing arrows forming a triangle.

To appeal you must do the following within 30 days of the date of receipt of this decision:

- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

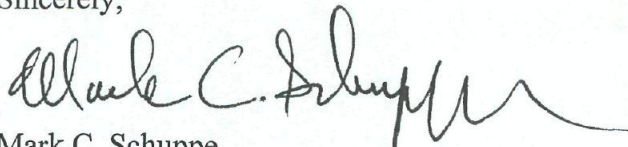
ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

If you have any questions, please contact Jeff MacLennan at (509) 329-3480.

Sincerely,



Mark C. Schuppe
Operations Manager
Office of Columbia River

JM:MCS:RAZ (121204)

Enclosure: *Your Right to Be Heard*

Cc: National Park Service

By certified mail: 7009 2250 0004 4950 7808

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage \$
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ARTHUR AVEY AND GAIL ROWLAND
PO BOX 838
KETTLE FALLS WA 99141

Street, Apt. No.,
or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

ARTHUR AVEY AND GAIL ROWLAND
PO BOX 838
KETTLE FALLS WA 99141

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☒ Addressee

B. Received by (Printed Name)

Ratti Hancock

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number
(Transfer from service label)

7009 2250 0004 4950 7808

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

Novmeber 14, 2012

Republic News-Miner
P.O. Box 438
Republic, WA 99166

COPY

Dear Sir or Madam:

Re: Water Application No. S3-30649

We acknowledge receipt of the affidavit of publication for the above-referenced application. This affidavit of publication is incorrect, as noted on the enclosed copy. The error is identified in red.

Because of this error, it will be necessary that the enclosed notice be republished once a week for two consecutive weeks. Please provide us with the original notarized affidavit of that publication.

Since the error in the initial publication was not caused by this office, we will not assume liability for cost of republication of the amended notice.

We must receive the affidavit of the republished notice within sixty (60) days from the date of this letter.

If you have any questions, please feel free to call me at (509) 329-3585.

Sincerely,

Karen Tusa
Water Resources Program
Eastern Regional Office

KT:md
Enclosures

cc: Arthur Avey & Gail Rowland, PO Box 838, Kettle Falls, WA 99141

AFFIDAVIT OF PUBLICATION

STATE OF WASHINGTON ss. COUNTY OF FERRY

RICHARD GRAHAM, being first duly sworn on oath disposes and says that he is the publisher of the REPUBLIC NEWS-MINER, a weekly newspaper. That said newspaper is a legal newspaper and is now and has been for more than six months since the date of the publication hereinafter referred to published in English language continually as a weekly newspaper in Ferry County, Washington. It is now and was during all of said time printed in an office maintained at the foresaid place of publication of said newspaper. That the said Republic News-Miner was on the 10th day of July, 1941, approved as a legal newspaper by the Superior Court of said Ferry County.

That the annexed is a true copy of Water Right as it was published in regular issues and not in supplement form, of said newspaper a period of Two weeks.

Commencing on Oct 25, 2012, and ending on Nov. 1, 2012, both dates inclusive. That said newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing is the sum of 90⁰⁰, which amount has been paid in full.

Newspaper Error - should be T36
Richard Graham, Publisher

LEGAL NOTICE

State of Washington, Department of Ecology. Notice of application to appropriate public waters. Take notice that Arthur Avey & Gail Rowland of Kettle Falls, WA on Sep. 19, 2012 under Application #S3-30649 filed for permit to appropriate public waters, subject to existing rights, from Lake Roosevelt (Columbia River) in the amount of .07 of a cubic foot per second, each year, for seasonal irrigation of one acre. The source of the proposed appropriation is located within the SW1/4NE1/4 of Sec 27, T6N, R37E W.M., in Ferry County.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a fifty (\$50) dollar recording fee and filed with the Department of Ecology, at the address shown below within thirty (30) days from Nov. 1, 2012. State of Washington, Department of Ecology, Water Resources Program ERO, POB 47611, Olympia, WA 98504-7611.

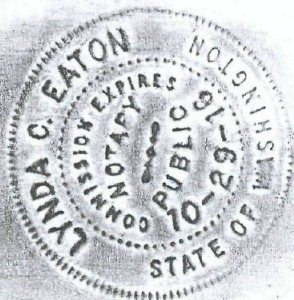
DOE-10/25&11/1C

SUBSCRIBED AND SWORN to before me this

Nov. 5, 2012

Lynnda Eaton
Notary in and for the State of Washington
residing at Republic.

My commission expires: 10/29/14



AFF. OK: Error - Republish

AFF. EXP: 10/29/14

CHKD BY: 10/29/14

NOV 09 2012
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

October 9, 2012

Mr. Arthur Avey
Ms. Gail Rowland
P.O. Box 838
Kettle Falls, WA 99141

COPY

Dear Mr. Avey:

Re: Application for Water Right No. S3-30649
WRIA 58 – Ferry County

We are ready to continue processing applications for water rights in your area.

Your next step is to publish a legal notice. The notice announces your proposed water use to the public and allows interested persons to comment. We have prepared and enclosed this notice for you.

Review Legal Notice Carefully

It is your responsibility to check the notice carefully before having it published. If you find an error, please contact this office for resolution. If we later find an error in your public notice, you may be required to publish an amended notice at your expense.

Publishing Legal Notice

You need to arrange and pay for publishing the legal notice in a newspaper in Ferry County.

- Publish the notice in the Republic News-Miner.
- Ensure that the notice appears once a week for two consecutive weeks.

If your published notice does not meet the above criteria, you will be required to have the notice republished at your expense.

Publication should start within 30 days from the date of this letter.

Next Step

You must request an Affidavit of Publication from the newspaper in which your notice appeared. The affidavit must be an original, notarized copy of your published notice. Please forward it to our office as soon as possible.

If you have any questions, you may contact me at 329-3585.

Sincerely,

Karen Tusa
Water Resources Program
Eastern Regional Office

KT:md

Enclosure: Legal Notice



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

NOTICE OF APPLICATION TO APPROPRIATE PUBLIC WATERS

TAKE NOTICE:

That Arthur Avey & Gail Rowland of Kettle Falls, WA on Sept. 19, 2011 under Application No. S3-30649 filed for permit to appropriate public waters, subject to existing rights, from Lake Roosevelt (Columbia River) in the amount of 0.07 of a cubic foot per second, each year, for seasonal irrigation of one acre. The source of the proposed appropriation is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Township 36 N., Range 37 E.W.M., in Ferry County.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a fifty-(\$50.00) dollar recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from

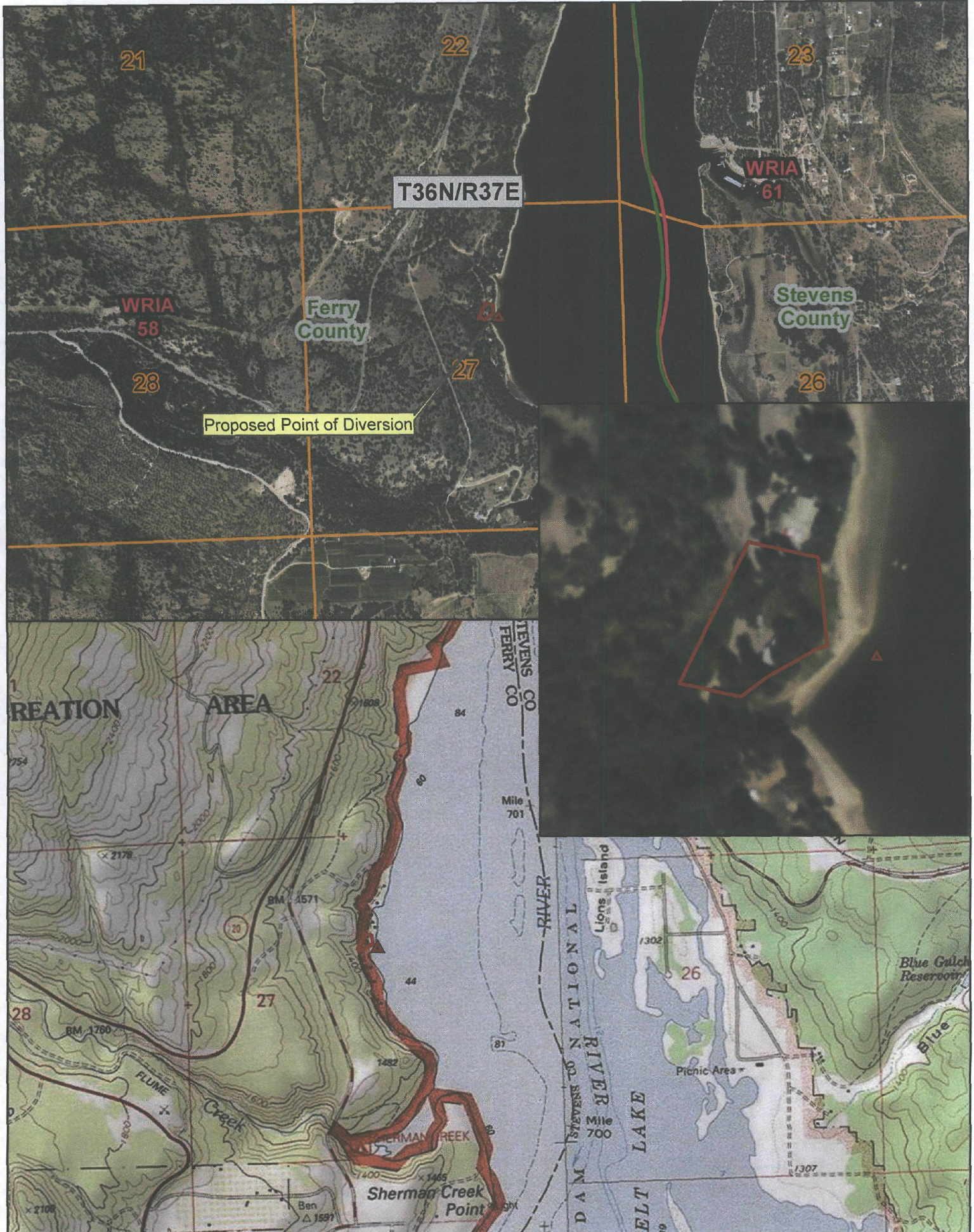
(Last date of publication to be entered above by publisher)

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RESOURCES PROGRAM - ERO
PO BOX 47611
OLYMPIA, WA 98504-7611

NOTICE



Map based on Application for a Water Right Permit received 9/19/2011



- County
- WRIA
- Township / Range
- Section

- ▲ Existing Point of Diversion
- ▲ Proposed Point of Diversion

- Existing Place of Use
- Proposed Place of Use

0 1,320 2,640 5,280 Feet

Comments:



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

October 12, 2011

Arthur Avey & Gail Rowland
P.O. Box 838
Kettle Falls, WA 99141

Re: Water Right Application No. S3-30649

Dear Mr. Avey & Ms. Rowland:

Department of Ecology has received your water right application. We have assigned it the number shown above. Please include this number if you contact us regarding your application.

It may be some time before we begin working in your area, due to funding and staff limitations. When we start actively evaluating applications in your watershed, we will prepare a public notice and send it to you with publication instructions. The filing of your application does not authorize you to start your project.

In addition, on December 28, 2004 the U.S. Bureau of Reclamation (BOR) withdrew all remaining unappropriated waters of the Columbia River above Priest Rapids Dam, including all tributaries and ground waters in continuity, in accordance with Ch. 90.40 RCW. The current withdrawal expires December 22, 2011. If and when Reclamation releases this withdrawal, we will resume processing applications. If you have any questions regarding the withdrawal you may contact William Ferry, Reclamation at 509-575-5848 ext. 244.

You must notify Ecology of changes such as address, property ownership, or variations in your proposed water use plans. If you have any questions, please contact me at (509) 329-3585

Sincerely,

A handwritten signature in cursive script that reads "Karen Tusa".

Karen Tusa
Processing Lead
Water Resources Program

KT:md

COPY